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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,533	04/09/2007	Graeme William Sturgeon	08436.0104USWO	7120
23552	7590	01/29/2009		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER ROWAN, KURT C	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 01/29/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,533	<b>Applicant(s)</b> STURGEON ET AL.	
	<b>Examiner</b> Kurt Rowan	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7,9,10,12-14,16-19,23 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7,9,10,12-14,16-19,23 and 25-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/1/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I in the reply filed on 11/19/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 28-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/19/2008.
- 3.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 16-17, 25-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 25 and 27 recite "a method as claimed in claim 14", but claim 14 is an article claim drawn to an extermination device. Hence the scope of the claim is unclear.
6. Claim 16 recites the limitation "the second one" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2, 4, 7, 10, 18, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Popp (US 2247066).

9. The patent to Popp shows an extermination device. In reference to claims 1 and 19, Popp shows an exterminating device having a holder 10 and a trigger mechanism 19, 24. The holder is configured to hold an expanded resilient ring 11-12, and the device is configured to release the ring free of the extermination device such that it contracts around a pest when the trigger mechanism is actuated by the pest as disclosed in page 1, column 2, line 38 to page 2, column 1, line 15. In reference to claim 7, Popp shows a firing member 17. In reference to claim 10, Popp discloses that the resilient ring is made from piano wire and a spring, which can be considered as a composite material.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claims 9, 12, 13, 14, 16-17, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Popp (US 2247066).

12. The patent to Popp shows a pest extermination device as discussed above. In reference to claim 9, Popp discloses that the resilient ring is made from piano wire, but it would have been obvious to employ a natural or synthetic rubber since the selection of a known material is based on its suitability for the intended use. See *In re Leshin et al.*, 125 USPQ 416. In reference to claims 12-13, Popp does not disclose the size of the opening of the holder as being in the range of 25-40mm or 60-100 mm, but routine experimentation would be used to determine the optimum size of the opening depending on the size of the target species. In reference to claim 14, Popp shows one resilient ring, but it would have been obvious to employ more than one ring for multiplied effect. See *In re Harza*, 124 USPQ 378.

13. Claims 5 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Popp as applied to claims 1 and 14 above, and further in view of Spillett (US 4735011).

14. The patents to Popp and Spillett show animal traps. Popp has been discussed above and does not show bait being used with the trap. Spillett shows an animal trap having bait on screen 62 such that the bait is located between the trigger 40 is between the bait (on screen 62) and the first end of the trap which is taken to be the bottom end. In reference to claims 5 and 23, it would have been obvious to provide the trap of Popp with bait having the trigger between the bait and a first end of the device as shown by Spillett for the purpose of attracting a target species to the extermination device.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Lee, Miyasaki, Schwartz, Thompson, and Reuthe show other exterminating animal traps that employ a loop or a noose or a constricting jaw that is spring loaded.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kurt Rowan  
Primary Examiner  
Art Unit 3643

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